

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KEVIN T. McDARTY and U.S. POSTAL SERVICE,
POST OFFICE, Loveland, OH

*Docket No. 99-1306; Submitted on the Record;
Issued August 15, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a four percent permanent impairment of the left lower extremity, for which he received a schedule award.

On January 27, 1993 appellant, then a 36-year-old letter carrier, sustained an injury to his left knee while in the performance of duty. The Office of Workers' Compensation Programs accepted appellant's claim for torn medial meniscus of the left knee and anterior cruciate ligament (ACL) of the left knee. After undergoing several surgical procedures to repair his injured left knee, appellant resumed his prior duties as a letter carrier on August 26, 1995. The Office compensated appellant for intermittent periods of disability due to his January 27, 1993 injury and subsequent surgeries. Appellant sustained another employment-related injury on November 29, 1995. Appellant, however, did not cease working as a result of his November 29, 1995 injury. The Office accepted this latter claim (A9-413003) for chondromalacia of the right knee. Appellant subsequently requested a schedule award for injuries sustained to both his left and right knees.

On January 14, 1997 appellant received a schedule award for a four percent permanent impairment of the left lower extremity. With respect to appellant's right leg, the Office noted that appellant had a zero percent permanent impairment. The award for appellant's left leg covered a period of 11.52 weeks, beginning on October 23, 1996 and continuing through January 11, 1997. On July 14, 1997 appellant filed a request for reconsideration accompanied by additional medical evidence. In a merit decision dated December 23, 1998, the Office denied modification of the prior decision.

The Board finds that appellant has failed to establish that he has more than a four percent permanent impairment of the left lower extremity.

Section 8107 of the Federal Employees' Compensation Act¹ sets forth the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage loss of a member, function or organ shall be determined. To ensure consistent results and equal justice under the law, good administrative practice requires the use of uniform standards applicable to all claimants. The Office has adopted the American Medical Association (A.M.A.), *Guides to the Evaluation of Permanent Impairment* (fourth edition, 1993) as an appropriate standard for evaluating schedule losses and the Board has concurred in such adoption.²

In the instant case, the Office based its January 14, 1997 schedule award on the December 1996 opinions of its medical adviser who reviewed the record, including appellant's most recent physical examination. The Office medical adviser found a zero percent impairment with respect to appellant's right lower extremity and a four percent impairment of the left lower extremity. The overall rating of appellant's left lower extremity was based in part on a finding of a two percent permanent impairment as a result of appellant's partial medial meniscectomy. This two percent rating properly corresponds with the diagnosis-based estimates provided at Table 64, page 85 of the A.M.A., *Guides* (4th ed. 1993). With respect to the reconstruction of appellant's ACL, the Office medical adviser explained that there was no instability or laxity noted on examination and, therefore, an additional rating for this procedure was not warranted under Table 64.³ Additionally, the Office medical adviser found a two percent impairment for decreased sensation in accordance with Table 68, page 89 of the A.M.A., *Guides*. The two percent impairment for appellant's partial medial meniscectomy when combined with the two percent impairment for decreased sensation represented an overall impairment rating of four percent in accordance with the Combined Values Chart at page 322 of the A.M.A., *Guides*.

On reconsideration, appellant submitted a March 25, 1997 report from his treating physician, Dr. C. Duane Bellamy, a Board-certified anesthesiologist, who found no impairment with respect to appellant's right knee and a 10 percent whole-person impairment as a result of appellant's ACL reconstruction of the left knee.⁴ The Office subsequently referred the case record for review by its medical adviser and in a report dated December 20, 1998, the Office medical adviser determined that appellant had a 19 percent impairment of the left lower extremity.

In its December 23, 1998 merit decision, the Office properly denied modification of the January 14, 1997 schedule award despite the fact that its own medical adviser provided an impairment rating far in excess of that which had previously been established. In so doing, the Office correctly noted that its medical adviser improperly assigned a 17 percent impairment

¹ 5 U.S.C. § 8107.

² *James J. Hjort*, 45 ECAB 595 (1994).

³ He did, however, note that appellant could possibly develop laxity in the future secondary to graft attrition, thus potentially warranting an increased impairment rating.

⁴ Dr. Bellamy's March 25, 1997 findings were based on an examination he performed on September 30, 1996.

rating for ACL reconstruction under Table 64 of the A.M.A., *Guides*. The Office explained that the contemporaneous examinations of Drs. Sheridan and Bellamy did not reveal any cruciate ligament laxity and, therefore, an impairment rating for ACL reconstruction, absent evidence of ligament laxity, was inappropriate under the A.M.A., *Guides*.⁵ In light of the fact that this particular issue was previously addressed by another Office medical adviser in a report dated December 11, 1996, the Office properly declined to adopt the December 20, 1998 finding of a 19 percent permanent impairment.⁶ Consequently, appellant has failed to provide any probative medical evidence that he has greater than a four percent permanent impairment of the left lower extremity.⁷

The December 23, 1998 decision of the Office of Workers' Compensation Programs is, hereby, affirmed.

Dated, Washington, D.C.
August 15, 2000

Michael J. Walsh
Chairman

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁵ Table 64 of the A.M.A., *Guides* (4th ed. 1993) does not specifically delineate an impairment rating for ACL reconstruction. It does, however, provide impairment ratings for "Cruciate *or* collateral ligament laxity" depending on the severity of the condition.

⁶ This latter finding also included a two percent impairment for a partial medial meniscectomy, which appellant had previously been awarded.

⁷ The Act provides that, for a total, or 100 percent loss of use of a leg, an employee shall receive 288 weeks' compensation. 5 U.S.C. § 8107(c)(2). In the instant case, appellant does not have a total, or 100 percent loss of use of her left leg, but rather a 4 percent loss. As such, appellant is entitled to 4 percent of the 288 weeks of compensation, which is 11.52 weeks.